

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-31, all of which have been rejected. Claims 1, 11, and 21 have been amended. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should* state *all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth “all reasons and bases” for rejecting the claims.

Claims 1-8, 10-12, 14-18, 20-22, 24-28 and 30-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,272,107 (“Rochberger”), in view of USP 6,678,259 (“Schwengler”). Claims 3, 9, 13, 19, 23 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rochberger and Schwengler in view of USP 6,970,919 (“Doi”). The Applicant respectfully traverses these rejections at least for

the reasons previously set forth during prosecution and at least based on the following remarks.

### **REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a

*prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**I. The Proposed Combination of Rochberger and Schwengler Does Not Render Claims 1-8, 10-12, 14-18, 20-22, 24-28 and 30-31 Unpatentable**

**A. Independent Claims 1, 11 and 21**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Rochberger and Schwengler does not disclose or suggest at least the limitation of “establishing a second communication path that is independent of a first communication path that couples at least two end points via at least a first broadband network, wherein each network connection on said first communication path has a corresponding redundant network connection on said second communication path .. wherein both of said first and second communication paths are established through the same plurality of network nodes,” as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

Regarding claim 1, Rochberger teaches a method comprising: establishing a second communication path (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 24 and 26) that is independent of a first communication path (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 16 and 18) that couples at least two end points via at least a first broadband (i.e. ATM) network (column 10, lines 14-20, the principle of the method of the first embodiment is that **two call paths are set up between the source and destination nodes: a primary call path and a redundant, i.e.,**

**secondary, call path.** The two call paths are, however, associated with each other in the switching tables of the two end nodes, i.e., the source and destination nodes), wherein **each network connection on first communication path** (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 16 and 18) **between at least two end points** (column 10 line 20, two end nodes, i.e., the source and destination nodes), **has a corresponding redundant network connection** (figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16, path going through elements 24 and 26) **on second communication path**, and wherein first and second communication paths are of different types (column 10 lines 14-20, different types are satisfied by one path being primary and the other being redundant); and transferring information that would be normally transferred over first communication path between at least two endpoints via established second communication path over corresponding redundant network connection (column 12 lines 10-15, at this point, data flows from the source user to the destination user over the redundant path (which is now the active path). Both the source and destination users are unaware that a break occurred in the active path aside from a short interruption in the flow of data cells).

Rochberger does not explicitly teach, primary and secondary path being different communication type.

Schwengler in the same or similar field of endeavor teaches primary and secondary path being different communication type (Abstract, column 3 lines 53-55, the redundant or secondary communication path may be a different line of sight path to the same or a different transmitter, or may be a lower frequency communication path. It is to be appreciated that this embodiment of the present invention, utilizing a primary and a secondary transmitter, allows a lower frequency non-line of sight link to be used as a backup for a primary communication path that does require line of sight).

See Final Office Action at pages 1-3 (emphasis added). The Applicant respectfully disagrees, especially with the above bolded portions of the argument. Applicant's claim 1 recites, in relevant portion, the following: "each network connection on said first communication path ... has a corresponding redundant network connection on said second communication path" (also bolded in the above argument). The important

feature here is that **both the first and second paths utilize the same network nodes, and each** of the network connections between the end points has the redundancy connection. Clearly, this is not disclosed in Rochberger.

For example, referring to figures 1 or 2 or 3 or 10 or 11 or 12 or 15 or 16 of Rochberger, the Applicant points out that none of the transit nodes 1-4 have redundancy network connections. **Even though Rochberger discloses separate paths (using different network nodes) between the source node and the destination node, each of the paths passes through separate (i.e., different) network nodes (nodes 1-2 and 3-4) and none of these nodes use redundancy connections.** Schwengler does not overcome the above deficiencies of Rochberger.

Accordingly, the proposed combination of Rochberger and Schwengler does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-8, 10, 12, 14-18, 20, 22, 24-28 and 30-31**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Rochberger in view of Schwengler has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-8, 10, 12, 14-18, 20, 22, 24-28 and 30-31 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-8, 10, 12, 14-18, 20, 22, 24-28 and 30-31.

**II. The Proposed Combination of Rochberger, Schwengler and Doi Does Not Render Claims 3, 9, 13, 19, 23 and 29 Unpatentable**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being anticipated by Rochberger and Schwengler has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (Doi) does not overcome the deficiencies of Rochberger and Schwengler, claims 3, 9, 13, 19, 23 and 29 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments. The Applicant

also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 3, 9, 13, 19, 23 and 29.

In general, the Final Office Action makes various statements regarding claims 1-31 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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